1951 *Present:* **Gratiaen J. and Pulle J.**

WALLOOPILLAI, Appellant, *and* MANDERS (Government Agent, Province of Sabaragamuwa), Respondent

S. C. 121—D. C. Ratnapura, 70

Land Acquisition Act, No. 9 of 1950—Section 61—Restrospective operation—Interpretation Ordinance, s. 6 (3) (b) (c)—Land Acquisition Ordinance (Cap. 203)—Order made thereunder—Right of appeal.

Where proceedings under the Land Acquisition Ordinance (Cap. 203) were pending before a Government Agent prior to the date when the Land Acquisition Act, No. 9 of 1950, came into operation, and a libel of reference was filed subsequent to that date, in the District Court, under section 11 (*d*) of the Land Acquisition Ordinance—

Held, that the Government Agent was not entitled, without the consent of the person to whom compensation was payable, to avail himself of the provisions of section 61 of the Land Acquisition Act, No. 9 of 1950, in order to have the amount of compensation referred by the District Court to the Board of Review for determination.

Held further, that the order of reference erroneously made by the District Court was appealable.

Government Agent, Central Province v. Evan (1881) 4 S. C. C. 151 followed.
Kanagasunderam v. Podihamine (1940) 42 N. L. R. 97 not followed.

APPEAL from a judgment of the District Court of Ratnapura.

C. E. Jayawardene for the defendant appellant.

V. Tennekoon, Crown Counsel, for the plaintiff respondent.

Cur. adv. vult.

December 7, 1951. GRATIAEN J.—

In May, 1949, the Government Agent of the Sabaragamuwa Province, on the directions of the Minister of Agriculture and Lands, took steps under the provisions of the Land Acquitisition Ordinance (Cap. 203) for the acquisition of certain immovable property in the Ratnapura District belonging to the appellant. In due course, namely, on the 6th February, 1950, the appellant was tendered a sum of Rs. 25,784, being the sum determined by the Government Agent as compensation, but as this offer was rejected by the appellant, a libel of reference was filed on 31st October, 1950, under section 11 (*d*) of the Ordinance referring the dispute to the District Court of Ratnapura for its adjudication.

In the meantime the Land Acquisition Act, No. 9 of 1950, had come into operation on 9th March, 1950—i.e., 7½ months before the proceedings were instituted in the District Court. Section 60 repealed the Land Acqusition Ordinance. It is nevertheless clear that, by reason of section 6 (3) (*b*) of the Interpretation Ordinance, such repeal could not, " in the absence of any express provision to that effect ", affect the right previously acquired by the appellant to have the existing dispute regarding the amount of compensation payable to him determined by

judicial process in accordance with the provisions of the earlier enactment. Vide *Hamilton Gell v. White* [1] in which the corresponding section of the Interpretation Act, 1889, was considered by the Court of Appeal, and *Vander Poorten v. The Settlement Officer* [2].

The only extent to which, *in the submission of the Crown*, this vested right of the appellant has been curtailed is to be found in section 61 which declares as follows:—

> "61. Where any proceedings under the Land Acquisition Ordinance, whether those proceedings are proceedings instituted in the District Court under section 11 of that Ordinance or are any other proceedings, are pending or incompleted on the date on which the Act comes into force and the only question for determination in those proceedings is in regard to the amount of compensation payable to any person or persons, that question shall, if any party to those proceedings who is interested in that question so desires, be referred to the Board of Review for determination; and the Board shall, notwithstanding anything to the contrary in this Act, hear and determine that question in accordance with the provisions of this Act as though that question were an appeal made to, and entertained by, the Board under this Act."

Learned Crown Counsel concedes, and rightly concedes in my opinion, that where a dispute regarding compensation was pending under the repealed Ordinance on 9th March, 1950, *but had not yet been referred to the District Court*, the Government Agent had no authority under section 61 to refer the matter to the Board of Review *except on the application of the person interested in claiming compensation*. On the contrary, it was his duty to file a reference under section 11 (*d*) of the Ordinance which was kept alive for that very purpose, and that duty was duly discharged in the present case. To this extent, at any rate, section 61 does not curtail the rights of a person claiming compensation but merely makes available to him the choice of an alternative tribunal for determining the dispute. Whether such rights can be curtailed at the instance of the Government Agent if proceedings previously instituted in the District Court were still "pending or incompleted" on 9th March, 1950, depends upon whether the Government Agent can be regarded as "a party . . . . who is interested" within the meaning of section 61. That question, for the reason which will shortly emerge, need not be considered in the present context.

It remains to be considered whether the language of section 61 empowered the Government Agent, even if he were a "person interested" within the meaning of section 61, to claim as of right, *and notwithstanding objection by the appellant*, that the proceedings which he had instituted in the District Court under section 11 on 31st October, 1950, should be referred by the Court (without determination) for the decision of the Board of Review constituted under the new Act. Acting upon the assumption that he was so entitled, the Government Agent made such an application on 19th June, 1951—by which time assessors had been

[1] *(1922) 2 K. B. 422.* [2] *(1947) 48 N. L. R. 361.*

appointed and an early date fixed for trial. The application was allowed by the learned District Judge on 9th July, 1951, and the present appeal is from his order bearing that date.

In seeking to discover the intention of Parliament which enacted section 61, one must not forget that, in view of section 6 (3) (*c*) of the Interpretation Ordinance, an express declaration in clear and unambiguous language is necessary to deprive a litigant of the right, which has already accrued to him, to demand a judicial investigation of his pending dispute by a Court of first instance and, if so desired, also by a Court of Appeal rather than be compelled to submit to the jurisdiction of an extra-judicial tribunal against whose awards the right of appeal is strictly curtailed by statute. Difficult problems as to the true meaning of section 61 may well present themselves in circumstances somewhat different from those which now arise. I am content to say, however, that as far as the present case is concerned, section 61 clearly has no application because—whether or not a Government Agent can legitimately be described as " a party . . . . who is interested in " the dispute—the proceedings sought to be transferred to the Board had not even been initiated on 9th March, 1950, and were therefore not " *pending or incompleted on the date on* which the Act came into force ". Moreover, I cannot discover any words in the section which permit an acquiring authority (or. for that matter, the opposite party) to insist that all the earlier proceedings taken in a District Court *to whose jurisdiction he had submitted for several months after the remedy allegedly provided by section 61 was available*, should at the last moment be made abortive by invoking the alternative jurisdiction of the Board of Review. Parliament could not have intended a party to whom two alternative courses of action are available to take his own time to select the remedy which he prefers. On the contrary, the choice should be made at the earliest possible opportunity. Section 61 cannot mean, for instance, that either party who has submitted to the jurisdiction of the District Court could change his mind at a later stage of the trial if he suspects that the proceedings are taking an unfavourable turn against him.

In my opinion the learned District Judge was not empowered in the present case to divest himself of the duty to determine the amount of compensation in terms of the provisions of the Land Acquisition Ordinance (Cap. 203). I would therefore set aside the order appealed from and send the record back to the lower Court with a direction that the trial should proceed according to law. The respondent must pay the appellant's costs of this appeal and of the proceedings in the lower Court (including such costs as might have been incurred in getting ready for the trial fixed for 9th July, 1951).

It is necessary, in conclusion, to refer to one further matter which was argued before us. Learned Crown Counsel raised a preliminary objection that, in view of a decision of a Bench of three Judges in *Kanagasunderam v. Podihamine* [1] the appellant was not entitled to appeal against the order of the learned District Judge dated 9th July, 1951, Mr. Jayawardene, however, relied on an earlier ruling of a Full Bench

[1] *(1940) 42 N. L. R. 97.*

of this Court in *Government Agent, Central Province v. Ryan* [1] which takes the contrary view. When this latter authority was cited, the preliminary objection was withdrawn, but it seems to me that we are nevertheless not relieved of the duty to decide whether, in view of the difficulty which was expressly and very properly brought to our notice, this Court does in fact possess jurisdiction to entertain the appeal.

The *ratio decidendi* of *Kanagasunderam v. Podihamine* (*supra*) certainly seems to be in conflict with that in *Government Agent v. Ryan* (*supra*). Were we free to choose which decision we should now follow, I would be inclined, with great respect, to adopt the reasoning of Cayley C.J., Clarence J. and Dias J. in the earlier case, because the combined effect of sections 19 (*b*), 36, 62 and 73 of the Courts Ordinance is to confer upon this Court a very comprehensive appellate jurisdiction (except where the right of appeal is " expressly disallowed ") over orders made by a District Court under the powers conferred on it either by the Courts Ordinance or by some other law. The *special* recognition of an aggrieved party's right of appeal under section 26 of the Land Acquisition Ordinance cannot legitimately be construed as an " express " disallowance or limitation of the *general* right of appeal conferred on him by section 73 of the Courts Ordinance. This is the reasoning upon which the Collective Court based its judgment in *Government Agent v. Ryan* (*supra*).

It is permissible, perhaps, to distinguish *Kanagasunderam v. Podihamine* (*supra*) on the ground that their Lordships were there concerned with an appeal from an order made under the Land Acquisition Ordinance by a Court of Requests and not by a District Court, as section 75, contrasted with section 73 of the Courts Ordinance, does not appear to contemplate extensions from time to time of the jurisdiction of Courts of Requests. Be that as it may, the attention of the distinguished Judges who decided *Kanagasunderam v. Podihamine* was not drawn to the previous ruling of the Full Bench in *Government Agent v. Ryan*. Had this been done I do not doubt that they would have acknowledged it as an authority binding on them unless it could be distinguished. It is therefore apparent that if *Kanagasunderam v. Podihamine* was intended to apply a *ratio decidendi* different from that of the earlier ruling, we must, with great respect, regard it as having, to that extent at least, been decided *per incuriam*.

It is well settled law that a ruling of the Full Bench of this Court, whenever it may have been pronounced, cannot be altered except by Parliament or over-ruled by the Judicial Committee of the Privy Council. The present Bench is therefore bound by *Government Agent v. Ryan* (*supra*) and on its authority we must necessarily hold that the decision of the learned District Judge was an appealable order. I would accordingly allow the appeal and make order as earlier proposed by me.

PULLE J.—

I agree to the order proposed and for the same reasons. On the 9th March 1950, namely, the day on which the Land Acquisition Act, 1950, came into force, there were no proceedings in the District Court relating

[1] *(1881) 4 S. C. C. 151.*

to the land acquired which could be described as pending or incompleted. There were proceedings pending or incompleted before the Government Agent on the 9th March, 1950. The appellant then had either—

(*a*) the right to a determination of the amount of compensation by the Board of Review, or

(*b*) the right under section 6 (3) (*c*) of the Interpretation Ordinance (Cap. 2) to have the amount of compensation determined under the Land Acquisition Ordinance (Cap. 203), as if that Ordinance had not been repealed.

The appellant did not intimate to the Government Agent any desire on his part to have the amount of compensation determined by the Board of Review. Thereafter, there was only one course open to the Government Agent, namely, to file a libel of reference in the District Court and ask that the amount of compensation be determined by that Court. The appellant had a vested right to a hearing in the District Court which could not be taken away without his consent.

On the preliminary objection I am in agreement with Gratiaen J. that it should be over-ruled for the reasons stated by him.

Appeal allowed.